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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,483	10/17/2003	Fabrice Billarant	CAC.P0033	2195

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EXAMINER

RODRIGUEZ, RUTH C

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/688,483	Applicant(s) BILLARANT, FABRICE	
	Examiner Ruth C. Rodriguez	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 12-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 24 July 2006 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat.

App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance:

- Regarding claims 1-3 and 8, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).
- Regarding claims 4-5, the phrase "particularly" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).
- In Claim 5, what is "good anchoring"? What structure does this define?
- In Claim 5: "can also be" is unclear - are anchoring patterns provided at the outer surface of the metallic resin rib or not?
- Claim 8 has top edges of which there is "intended to be placed" an article for
- moulding over according to claim 1, said article being "intended to be fixed" to a moulded object by solidification. How would one determine if another structure has something "intended" to be placed or fixed? Is it being claimed and required or not? Applicant is reminded that it has been held that the recitation with

respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

- Claims 2-8 are also rejected as depending from a rejected claim.

Claim Objections

4. Applicant is advised to review all claims for grammar, particularly verb tenses and subject/verb agreement, and to ensure that all clauses are clear in what they modify.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-8 and 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimamura et al. (US 6,460,230 B2) in view of Fleuchaus et al. (US 6,842,950 B2).

Shimamura disclose an article (1) over which a molding is to be made by pouring foam on it while it is place on top of a cavity (between walls 9) delimited by vertical walls

(9) having a top surfaces (C. 8, L. 8-28 and Fig. 3). The article comprises a base (1) having a central strip region, ledge regions (4) extending laterally from the central strip region, a top surface and a bottom surface. Hooks (2) are extending from the central strip region of the bottom surface of the base and metallic material is fixed on the bottom surface of the base (C. 4, L. 59-67 and C. 5, L. 1-23). The base is flat in shape (Figs. 1-3). The flat base is of a material and thickness such that when the article is placed on top of the cavity, with the hooks inside the walls and facing the cavity and with foam being poured on the article (C. 8, L. 8-28 and Figs. 1-3). The bottom surface of the ledge regions is in contact with the top surfaces of the vertical walls to provide surface to surface contact between the ledge regions and the vertical walls (Fig. 3). Shimamura fails to disclose that material is fixed on the bottom surface of the base and that the hook strip has a width being less than 10 mm, preferably between 3 and 10 mm. However, Fleuchaus teaches an article over which a molding is to be made by pouring foam on it while it is place on top of a cavity (between walls 24) delimited by vertical walls (24) having a top surfaces (Fig. 2). The article comprises a base (52) having a central strip region a having a top surface and a bottom surface. Hooks (56) are extending from the central strip region of the bottom surface of the base and metallic material (60) is fixed on the bottom surface of the base (Figs. 5-7). The base is flat in shape (Figs. 1-3). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have metallic material being fixed on the bottom surface of the base as taught by Fleuchaus in the article disclosed by Shimamura. Doing so, provides a magnetic engagement between the base and the

mold. Regarding to the width of the hook strip, it would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to have the hook strip with a width of less than 10 mm, preferably between 3 and 10 mm since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Fleuchaus also teaches that the hooks are made in the form of longitudinal rows (Figs. 5-7). The number of rows preferably is less than or equal to three (Figs. 5-7). The hooks have a Christmas tree shape (Figs. 5-7).

Shimamura also discloses that the longitudinal strip comprises hooks stops at a distance from the longitudinal ends of the base (Figs. 1-7). The longitudinal end regions thus are formed without any hooks particularly over a distance of some millimeters to enable the base to be placed at the level of its longitudinal ends directly on the top edges of the walls forming the cavity (Figs. 2 and 4). Once again, Shimamura fails to disclose that distance is preferably less than 15 mm. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the distance being preferably less than 15 mm since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Shimamura fails to disclose that the base is of polyamide 6 and has a thickness of between 0.2 mm and 0.4 mm or the base has a thickness of 0.15 mm to 0.35 mm

and is of polyamide 6-6. However, it would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to have the base made of polyamide 6 or polyamide 6-6 since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Also, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the base with a thickness of between 0.2 mm and 0.4 mm when polyamide 6 is used or a thickness of 0.15 mm to 0.35 mm when polyamide 6-6 is used since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Shimamura discloses an article having all the limitations mentioned above for the rejection of claim 1. Shimamura discloses that the metallic material is a magnetic plate. Shimamura fails to disclose that the metallic material is embodied in the form of a metallic resin rib fixed by gluing to the top surface of the base particularly by forming two longitudinal reinforcements on either side of the resin-base interface to provide good anchoring of the foam where anchoring patterns can also be provided at the outer surface of the metallic resin rib. However, it would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to have the metallic material being embodied in the form of a metallic resin rib fixed by gluing to the top surface of the base particularly by forming two longitudinal reinforcements on either side of the resin-base interface to provide good anchoring of the foam where anchoring patterns

can also be provided at the outer surface of the metallic resin rib since the Examiner the Examiner takes Official Notice that the use of a metallic resin rib for centering the article is well known in the art as taught by Fleuchaus.

Shimamura also fails to disclose that the resin rib comprises at least 6 g per linear meter of metallic powder for a total weight of metallic resin of at least 10 g per linear meter. However, it would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to have the resin rib comprising at least 6 g per linear meter of metallic powder for a total weight of metallic resin of at least 10 g per linear meter since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Fleuchaus teaches a moulded object of foam to which one or more articles for moulding over are fixed by hardening of the foam on the top surface of the base after the foam has been poured in a mould (Figs. 1, 2 and 9).

Shimamura discloses a mould in the base of which there is made a cavity having walls projecting from the base and on the top edges of which there is intended to be placed an article for molding over (C. 8, L. 8-28 and Fig. 3). The article is intended to be fixed to a molding object by solidification of a foam that is poured there over (C. 8, L. 8-28). The cavity has two side walls preferably parallel and spaced apart by a distance (Fig. 3). Shimamura fails to disclose that the distance is between 4.5 mm and 12 mm. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the distance being between 4.5 and 12 mm since such

a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Regarding claim 12, the rejection of claim 1 serves to reject claim 12 that has the same limitations as claim 1 with the exception that it recites that the element instead of the base and left and right ledge regions.

The element is flat in shape (Figs. 1-7).

The magnetically attractable material is fixed on the top surface of the element (Figs. 1-7).

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimamura.

Shimamura disclose an article (1) over which a molding is to be made by pouring foam on it while it is place on top of a cavity (between walls 9) delimited by vertical walls (9) (C. 8, L. 8-28 and Fig. 3). Each wall has a top surfaces (C. 8, L. 8-28 and Fig. 3). The article comprises an element (1) and right and left ledge regions (4). The element has a top surface and a bottom surface (Figs. 1-3). Hooks (2) are extending from the central strip region of the bottom surface of the base and magnetically attractable material is fixed to the element (C. 4, L. 59-67 and C. 5, L. 1-23). The element is of a material and thickness such that when the article is placed on top of the cavity, with the hooks inside the walls and facing the cavity and with foam being poured on the article (C. 8, L. 8-28 and Figs. 1-3). The bottom surface of the ledge regions is in contact with the top surfaces of the vertical walls to provide surface to surface contact between the

ledge regions and the vertical walls (Fig. 3). Shimamura fails to disclose that the hook strip has a width being less than 10 mm, preferably between 3 and 10 mm. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the hook strip with a width of less than 10 mm, preferably between 3 and 10 mm since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Response to Arguments

8. Applicant's arguments with respect to claims 1-8 and 12-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cripps et al. (US 5,061,540), Fujisawa et al. (US 6,439,537 B1), Murasaki (US 6,463,635 B2), Billarant et al. (US 6,596,371), Fujisawa et al. (US 6,720,059 B2) and Fleuchaus et al. (US 6,842,950 B2) are cited to show state of the art with respect to articles having hooks and being used in combination with a mold to mold a cushion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C. Rodriguez whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.


Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ruth C. Rodriguez
Patent Examiner
Art Unit 3677

rcr
October 2, 2006


Katherine Mitchell
Primary Examiner